

FACTSHEET

TITLE: **WAIVER NO. 06001**, requested by Mark Hunzeker on behalf of Jonathan Waterbury and Howard Richoux, to waive the requirements for street paving, sidewalks, street lights, street trees and the dedication of additional right-of-way, on property generally located at South 70th Street and Shamrock Road.

STAFF RECOMMENDATION: Denial.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 02/15/06
Administrative Action: 02/15/06

RECOMMENDATION: Denial (5-0: Esseks, Sunderman, Carroll, Taylor and Carlson voting 'yes'; Larson, Strand and Krieser absent).

FINDINGS OF FACT:

1. This is a request to waive all improvements required by the Land Subdivision Ordinance associated with the Shamrock Addition Final Plat, consisting of approximately 3.8 acres.
2. The staff recommendation to deny this waiver request is based upon the "Analysis" as set forth on p.2-4, concluding that the waiver request does not conform with the Comprehensive Plan or the Land Subdivision Ordinance. The staff suggested a community unit plan as an alternative, along with a petition to vacate Shamrock Road.
3. Testimony by the applicant's representative, Mark Hunzeker, is found on p.5-6, wherein he purports that these same waivers have been approved previously, and that the suggested community unit plan and street vacation would not be possible without 100% of the property owners' agreement.
4. Testimony in opposition by Bill Austin is found on p.6-7, and the petition signed by four property owners abutting Shamrock Road in support of a community unit plan is found on p.26-27.
5. The applicant's response to the opposition is found on p.8.
6. On February 15, 2006, the Planning Commission agreed with the staff recommendation and voted 5-0 to recommend denial.

FACTSHEET PREPARED BY: Jean L. Walker

REVIEWED BY: 

REFERENCE NUMBER: FS\CC\2006\WVR.06001

DATE: March 6, 2006

DATE: March 6, 2006

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

for February 15, 2006 PLANNING COMMISSION MEETING

PROJECT #: Waiver of Design Standard #06001

PROPOSAL: Waive street paving, sidewalks, street lights, street trees, and dedication of additional right-of-way.

LOCATION: South 70th Street and Shamrock Road.

CONCLUSION: This waiver request does not conform to the Comprehensive Plan or Subdivision Regulations.

RECOMMENDATION:

Denial

GENERAL INFORMATION:

LEGAL DESCRIPTION: The north 3/8 of Lot 7, Potter's Subdivision, located in the SE 1/4 of Section 33, T10N, R7E, Lincoln, Lancaster County, Nebraska.

EXISTING LAND USE AND ZONING: Undeveloped R-1 Residential

SURROUNDING LAND USE AND ZONING:

North:	Residential	R-1 Residential
South:	Residential	R-1 Residential
East:	Residential	R-1 Residential
West:	Holmes Lake Park	P Public

HISTORY:

July 14, 2005 - Final Plat #05073 was submitted. The director's letter was sent August 12, 2005.

April 23, 1985 - Subdivision Permit #2405 was approved allowing the north 3/8 of Lot 7, Potter's Subdivision to be subdivided into four lots subject to the conditions of Resolution #A-70031.

April 22, 1985 - Resolution #A-70031 was approved subject to three conditions, one of which rendered it null and void if the subject property was not final platted by April 22, 1986.

ANALYSIS:

1. This is a request to waive all improvements required by Title 26 (Land Subdivision Ordinance) associated with the final plat of Shamrock Addition. The improvements are street paving, sidewalks, street lights, and street trees. Improvements required by Chapter 26.27 must be installed at the time of final plat. The request also seeks to not dedicate any additional right-of-way required for a turn-around.

2. The land involved in the Shamrock Addition Final Plat #05075 is approximately 3.8 acres in area, and is a subdivision of the remaining portion of Lot 7, Potter's Subdivision. This is the same land covered by the now null and void Administrative Subdivision Permit #2405 approved in 1985. An associated request to waive paving and sidewalks was also approved in 1985, subject to the following three conditions:
 - A. Submit all required drawings, documents, information, and fees to accomplish the platting of the subject property in accordance with the platting requirements of the City of Lincoln, including the dedication of a street from Shamrock Road to the south limits of the proposed subdivision in the vicinity of proposed parcel #4.
 - B. That proposed parcels # 2 and #4 shall be nonbuildable until the final plat of the subject property is approved and accepted by the City of Lincoln.
 - C. That failure to accomplish the platting of the subject property within one year from the date administrative subdivision approval is granted shall render the administrative subdivision null and void.
3. The subject property was not final platted within one year, however proposed Lots 2, 3 and 4 were conveyed and a home was constructed on Lot 3.
4. The final plat of Shamrock Addition was submitted in response to a comment by the title company involved in the recent sale of proposed Lots 2-4. The title company noted that the remaining portion of Lot 7, Potter's Subdivision had not been subdivided in accordance with the requirements of Lincoln Municipal Code (LMC).
5. The director's letter summarizing the staff review of the final plat of Shamrock Addition dated 8/12/05 noted the items required to have the plat approved, including those improvements that must be installed in accordance with LMC Title 26. The required improvements include street paving, sidewalks, street lights, street tress, and also noted that additional right-of-way needed to be dedicated to accommodate a turn-around per Design Standards.
6. The director's letter also noted the options available to the applicant to proceed with platting the property. The first option noted is to petition the City Council to waive the required improvements. The second is for all the owners of land along Shamrock Road to jointly apply for a Community Unit Plan (CUP) and vacation of Shamrock Road. The letter noted that staff supported the option creating a CUP and street vacation.
7. With the CUP, Shamrock Road would become a private roadway. Waivers to required improvements could be granted as part of the CUP. The private roadway would become the maintenance responsibility of the homeowners' association and could be allowed to remain in its current condition.
8. Public Works notes that "Shamrock Road is an existing aggregate surface street that does not meet State Board of Classification minimum standards for a street. Trees are too close to the edge of the substandard roadway which now functions as a one lane road due to its narrow width. The City has liability for the substandard street which increases by adding additional lots and traffic potential. Engineering Services recommends that the street be paved per subdivision ordinance and design standard requirements."

9. If the waivers are approved, the City retains maintenance responsibility for Shamrock Road, a substandard street, along with any potential liability caused by the substandard design of the street. If the public right-of-way is vacated and a private roadway is created as part of a CUP, the homeowners assume the responsibility for the street. Under that scenario, staff supports the waivers to allow the development to remain in its existing condition, a preference voiced by several of the adjacent property owners.

Prepared by:

Brian Will
441-6362, bwill@lincoln.ne.gov
January 31, 2006

**APPLICANT/
CONTACT:**

Mark Hunzeker
PO Box 95109
Lincoln, NE 68509
402.476.7621

OWNERS:

Jonathan Waterbury
6633 Shamrock Road
Lincoln, NE 68506

Howard Richoux
735 P Street
Port Townsend, WA 98638

WAIVER NO. 06001

PUBLIC HEARING BEFORE PLANNING COMMISSION:

February 15, 2006

Members present: Esseks, Sunderman, Carroll, Taylor and Carlson; Krieser, Strand and Larson absent.

Staff recommendation: Denial.

Ex Parte Communications: None

Proponents

1. **Mark Hunzeker** appeared on behalf of Howard Richoux, who purchased Lots 2, 3 and 4 of this proposed subdivision from one of the other owners, Mr. Waterbury, in 1985. This subdivision was approved in 1985, conditioned upon there actually be a plat filed within a year of approval of that subdivision. The primary reason for that condition being imposed was that at that time, Planning and Public Works were looking at the city subdivision regulations and saying that there needs to be a connection from this subdivision to the subdivision to the south, which is Park Crest Drive. At that time, Park Crest Drive stopped at a certain point, but the idea was that Park Crest Drive would continue at least far enough to cul-de-sac and encompass that area abutting South 70th Street and that there would be a street that would connect Shamrock Road to Park Crest Drive. Park Crest Drive has since been cul-de-sac'd and the area east has been developed as a commercial area and there will never be a road running south from Shamrock Road to meet up with Park Crest Drive.

Hunzeker went on to explain that this issue came up when Richoux sold the property last summer and it was discovered by the title company that there was a problem in that the plat that was required when the previous subdivision was approved had not been filed. So we now have two houses on two of the lots in this subdivision, both with unclear titles, and two other lots which are occupied by a tennis court and flower garden area. In response to the initial application for subdivision, the staff responded, requiring the paving of the street, dedication of right-of-way, building a cul-de-sac, planting street trees, building sidewalks, etc. In addition, Hunzeker pointed out that since this four lot subdivision was approved in 1985, another subdivision was approved on the north side of Shamrock Road, which also waived the paving, sidewalks, street trees and all the other waiver requests. Thus, once in 1985 and at least once since 1985, the city has waived all of these requirements, and this application has come forward because the first time the waivers were approved, it was conditioned upon there being a plat filed within a year. The applicant has no alternative but to ask that the Planning Commission recommend once again that those requirements be waived because it is virtually impossible for these owners to dedicate all of the right-of-way required, pave the street by themselves, and do all the other things required in a subdivision like this and meet all city requirements because they do not have the capability to do so.

The applicant is requesting that the same waivers that have been approved twice before be approved for this subdivision to allow the applicant to move on with the sale of the property.

As far as the suggestion that the applicant enter into a community unit plan and vacate the street, Hunzeker noted that the Commission has received a communication that there are at least four or

five of the neighbors willing to do that. However, for at least 200' west of South 70th Street, or more, the two property owners on both sides have not agreed to vacate the street and enter into any sort of community unit plan. There would be at least the first 300-400' of Shamrock Road from 70th Street west as a public road, regardless of what happened with the property to the west.

Esseks is concerned about having public roads within the city that are not paved. That is a bad standard that approval of this request would endorse. Hunzeker indicated that he would understand this concern if they were creating a new road, but this is not a new road. It has been around for at least 20 years, probably longer. It is a road that these folks like and they like it the way it is. Even under the staff's suggested alternative of vacating the street and doing a community unit plan, they are offering to waive these same standards and leave the road exactly the way it is. What the staff is recommending would not change it into a paved road. The maintenance is now being done by the property owners. Only by mistake does the city send a snowplow down this road.

Esseks commented that to be an inappropriate situation and the city believes it would have to take over full maintenance of an unpaved road. Hunzeker reiterated that there are at least the first few hundred feet of property owners who object to the concept of vacating the road and assuming obligation for maintenance of Shamrock Road. Hunzeker does not know whether they could get all the property owners to agree on a set of covenants. Not only would they have to have 100% of the property owners sign the petition to vacate the street, they would also have to have 100% agreement on a set of covenants which would obligate each of them to contribute to the maintenance plus paying for any insurance and other maintenance. Esseks suggested that maybe that effort should be made since the owners are currently maintaining the road. Formalizing that might not be a problem. Hunzeker stated that that effort has been made. There were meetings of the homeowners, and at least one of those homeowners who is critical to the street vacation vocally opposed. Without 100% agreement of all the property owners, this problem cannot be fixed privately, and it won't change the standard of the roadway one way or the other. Hunzeker has very low level of confidence that it is possible to fix it privately. They have tried and that is why they are here. His client has sold the property and has moved out of town and is waiting to close on the house that he sold back in July. This needs to be resolved. He agreed that it is not a good example of how to do things, but occasionally sins of the past reassert themselves and we have to fix mistakes.

Carlson inquired whether Hunzeker's clients could assume the responsibility on behalf of the owners who do not want to participate. Hunzeker indicated that the street cannot be vacated without 100% of all the property owners that have access to the street. He believes that the staff has indicated if they could get 100% of those west of the two property owners closest to 70th Street, they might be able to vacate it from there on, but even that would be a highly unusual situation. Carlson noted that it is a substandard street. We do have acreage areas in the city where we have allowed such standards, but it seems like the process of further subdivision requires them to come up to standard.

Opposition

1. **Bill Austin** appeared on behalf of a number of property owners within the area of Shamrock Road, west of 70th Street, who are in opposition to the request for waivers and believe that denial is appropriate.

Austin pointed out that the Shamrock Road neighborhood in this location is very unusual. It has a single country lane that serves seven houses. There are no sidewalks or street trees. It is not

a paved road. The neighbors like it that way and would like to keep it that way. Why are they not in favor of the waivers? The reason is that they believe that this is not the appropriate approach. It is a haphazard ex parte approach that does not actually serve the greatest benefit of the neighborhood. It is time to confirm the character of this neighborhood as an urban/rural subdivision within the city. His clients believe that the appropriate way to do that is through the development of a community unit plan that would serve the needs of everyone in this area. It would provide and take care of a number of problems. The CUP would allow the subdivision; the vacation of the road could be accomplished with conversion to a private roadway serviced and maintained by the neighborhood; and we would know that this area would remain a large lot development and maintain the character that the neighbors have come to love.

Austin noted that there was an attempt made to develop the community unit plan. A couple of neighborhood meetings were held and concerns were raised. Austin submitted petitions from four of the five neighbors to the west, leaving out the two owners to whom Mr. Hunzeker made reference. He does not know whether they would be in favor or opposed to a community unit plan or in vacation of the street. The CUP would take care of the subdivision issue, the character of the neighborhood issue, and the concerns raised by the city regarding the street. The four owners who have submitted the petitions, along with the Richoux property, would represent all that would be needed for a limited CUP in the area. It is something that he believes the staff would look upon with reasonable favor.

With regard to the issue of the title as to whether or not there is a burning issue that needs to be addressed requiring the waivers at this time, Austin advised that he first became involved last August and he asked why it is a subdivision that is needed at all. There has been transfer of deeds older than 5 years, which should take care of the idea of splitting Lot 1 from the remainder of Lots 2, 3 and 4. There is a state statute that provides that if a deed is on file more than 5 years which has subdivided property without benefit of subdivision approval, the title is valid. He also understands that the prospective purchaser would like to have three separate lots at the time of closing. That is a different issue as to whether he can obtain valid title to the overall piece of property. The tennis court is an accessory use located on a separate lot.

Austin suggested that the character of the neighborhood should be maintained by the use of a community unit plan.

Staff questions

Esseks asked whether the city would be at an advantage if the CUP were created only for the area to the west. Would there still be a public benefit if there were a CUP on the limited amount of Shamrock Road? Brian Will of Planning staff responded that the best of all circumstances would be a community unit plan from 70th Street west. If that is not feasible, staff would also support a CUP dropping off the two lots adjacent to 70th Street. Esseks asked what advantage that would be to the city, community and tax payers. Will stated that the staff has concerns with continued maintenance and potential liability associated with maintaining that sub-standard road. A CUP over a portion would at least relieve the city of partial responsibility for that road. A CUP would also solve the seller's problem. The final plat noted that there were two options, either waiver of the subdivision requirements or a CUP, which is also another avenue to waive those requirements. The CUP would allow the final plat to move forward.

Carlson asked whether the petitions submitted today are enough. Will stated that the owners involved need to come forward with an application for a CUP. Carlson hears that there are owners

that will object to the vacation and CUP. Are the four petitions submitted today enough? Will had not seen the petitions, but vacating the roadway does require 100% of the abutting property owners. The staff is not in receipt of any petitions to vacate the road.

Response by the Applicant

Hunzeker disagreed that this is "a haphazard ex parte approach". It has certainly not been ex parte. Everyone has had plenty of notice. One of the people signing in favor of the CUP also signed a petition in opposition in December. The buyer of this property is not interested in becoming obligated for ongoing maintenance of that road. Hunzeker has a very, very low level of confidence that they will be able to get everyone to sign off on everything that is going to be necessary. If the concern is that we want this area to remain as it is, and remain in large lots and not 9,000 square feet as allowed under R-1, that is what this application is proposing. This proposes acre size lots just like the ones approved on the north side of the street. There is about 600 feet of frontage that won't be vacated so you've got the problem of having the sub-standard road maintained by the city for almost as much frontage as you would have under a CUP. And all of the same waivers being requested here would have to be approved with a CUP. His client has demonstrated good faith to try to work this out. This application was made because after the meeting that they had in December, it was very clear that they would not be able to get a CUP put together and get everyone to agree on the covenants. They have spent another six weeks waiting to close on this sale. Hunzeker assured that his client would continue to work with the neighbors and if they can get something worked out between now and the City Council hearing, they may still come back with a CUP.

Esseks wondered whether the 9,000 sq. ft. lots could be prevented under a CUP. Hunzeker suggested that the CUP is no more binding. If the city approves a subdivision of these lots, they can't get any smaller without another subdivision approval and this same discussion of waiving the requirements. If the four lots subdivided in 1985 are allowed to stay the way they are, those are fixed and cannot change without another subdivision being approved.

Esseks believes the covenants could provide nice deed restrictions. Hunzeker suggested that covenants are difficult to enforce.

ACTION BY PLANNING COMMISSION:

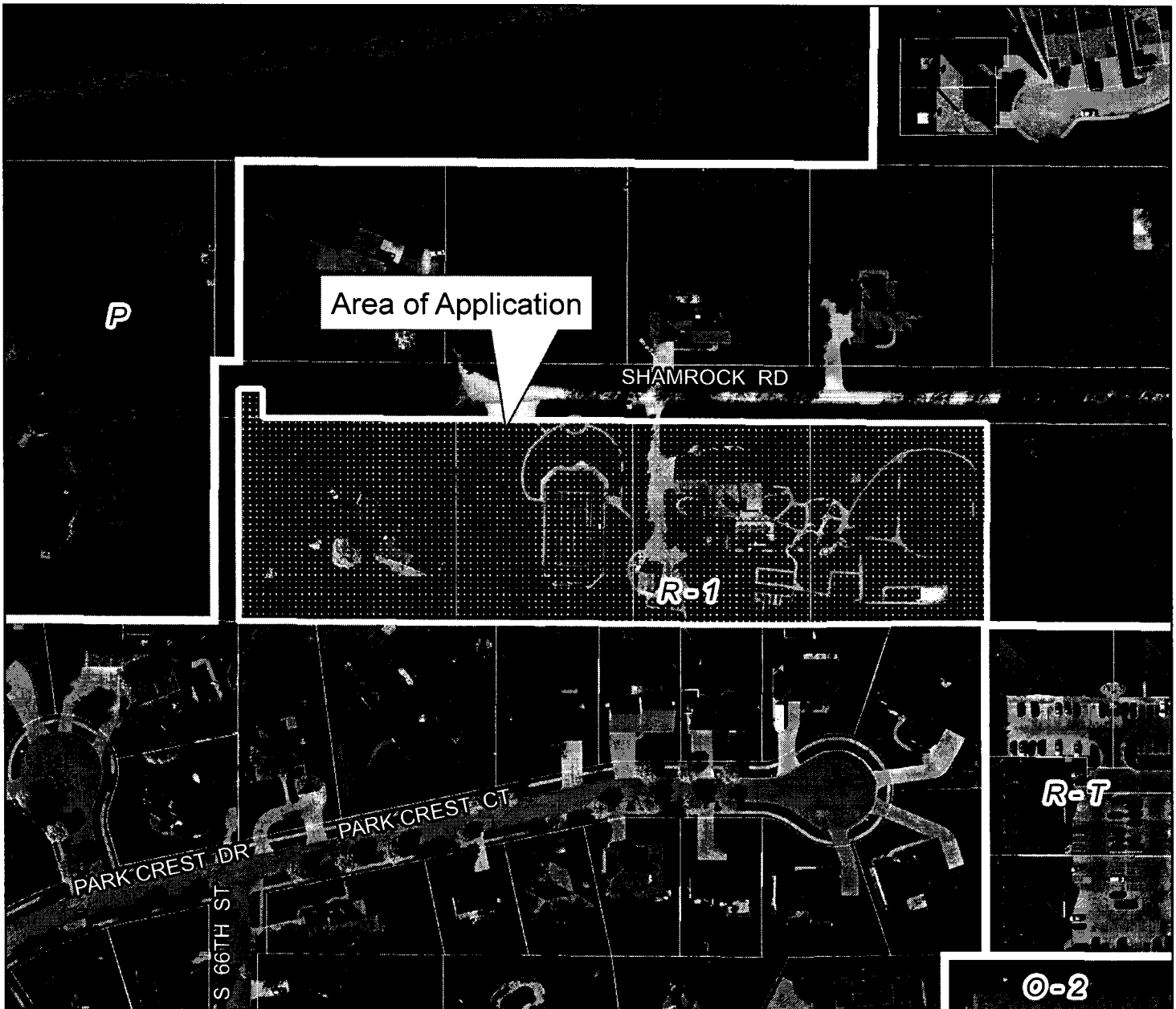
February 15, 2006

Carroll moved to deny, seconded by Esseks.

Carroll commented that it is a bad situation now and he does not think waiving the standards is going to make it any better. He agrees that the CUP route is the way to go.

Carlson stated that he empathizes with the current ownership, but he does not get the sense that there has been a city body that has recommended that subdivision occur and that the street stay the way it is.

Motion to deny carried 5-0: Esseks, Sunderman, Carroll, Taylor and Carlson voting 'yes'; Larson, Strand and Krieser absent. This is a recommendation to the City Council.



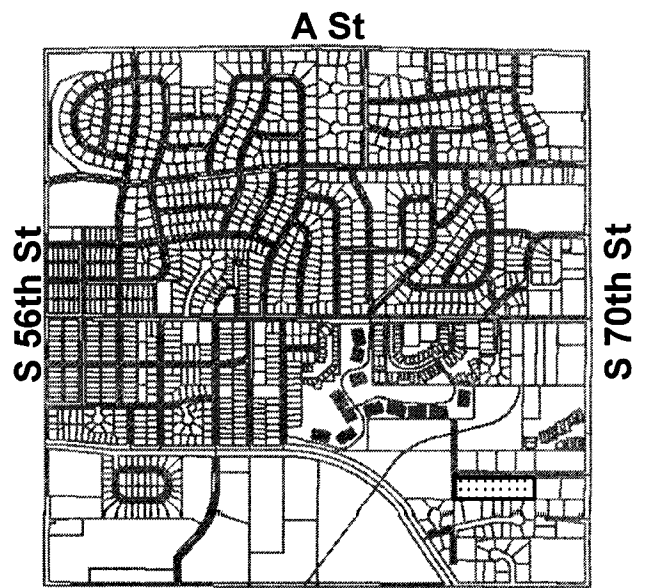
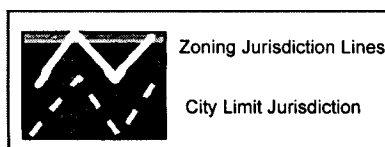
Waiver #06001 **S 70th St & Shamrock Rd**

2005 aerial

Zoning:

- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- R-C Residential Conservation District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial District
- B-4 Lincoln Center Business District
- B-5 Planned Regional Business District
- H-1 Interstate Commercial District
- H-2 Highway Business District
- H-3 Highway Commercial District
- H-4 General Commercial District
- I-1 Industrial District
- I-2 Industrial Park District
- I-3 Employment Center District
- P Public Use District

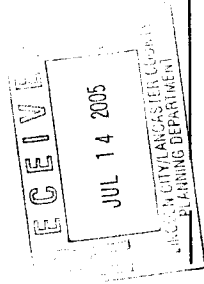
One Square Mile
 Sec. 33 T10N R7E



Van Dorn St

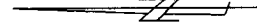
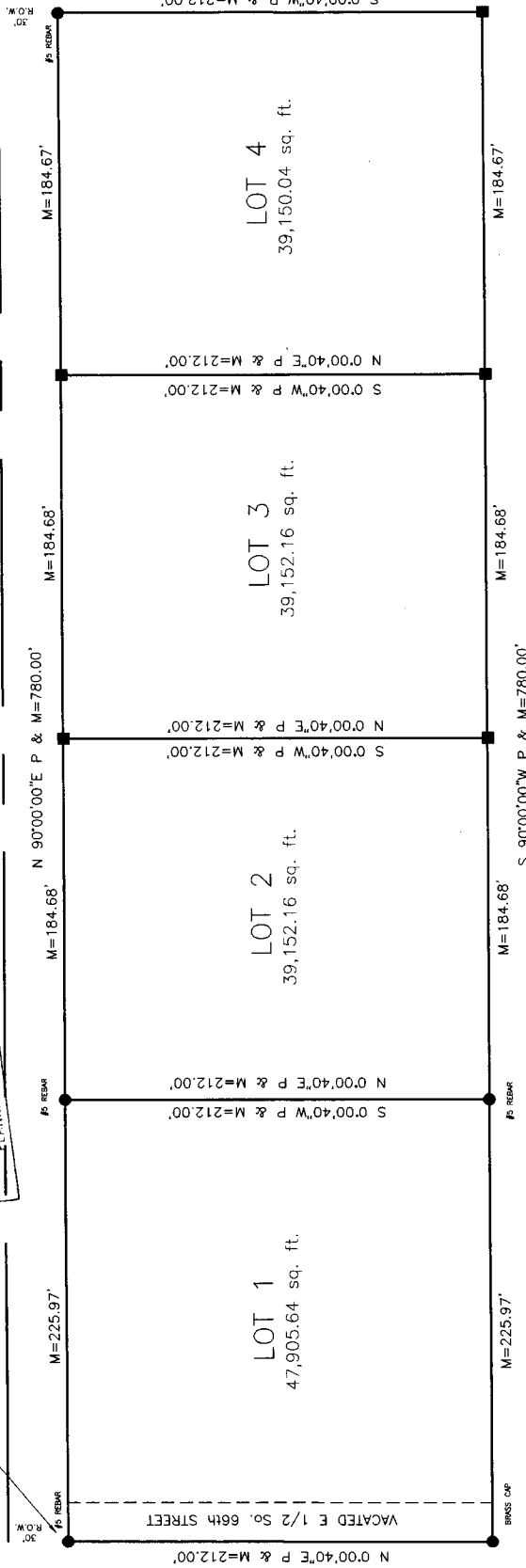
009

P=PLATTED
M=MEASURED
●=FOUND AS NOTED
■=SET MONUMENT (#5 REBAR & CAP)
TOTAL NUMBER OF LOTS IS 4
TOTAL NUMBER OF ACRES IS ±3.80



POINT OF BEGINNING

SHAMROCK ROAD



ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA
LANCASTER COUNTY

On this _____ day of _____, 2005, before me the undersigned, a notary public, duly commissioned, qualified for and residing in said county, personally came to me JONATHAN L. WATERBURY AND JOAN S. WATERBURY, husband and wife, known to be the identical persons who's names are fixed to the dedication to the foregoing plat and they acknowledge the same to be their voluntary act and deed.

My Commission Expires the _____ day of _____

NOTARY PUBLIC

ACKNOWLEDGMENT OF NOTARY

STATE OF NEBRASKA
LANCASTER COUNTY

On this _____ day of _____, 2005, before me the undersigned, a notary public, duly commissioned, qualified for and residing in said county, personally came to me HOWARD N. RICHOUX AND JEANETTE A. RICHOUX, husband and wife, known to be the identical persons who's names are fixed to the dedication to the foregoing plat and they acknowledge the same to be their voluntary act and deed.

My Commission Expires the _____ day of _____

NOTARY PUBLIC

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Pierson|Fitchett
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Mark A. Hunzeker
William G. Blake
Peter W. Katt
William C. Nelson
David P. Thompson
Patrick D. Timmer
Randy R. Ewing
Shanna L. Cole
Jason L. Scott

Gary L. Aksamit
of Counsel

January 19, 2006

Marvin S. Krout
Director of Planning
City of Lincoln
555 S. 10th Street
Lincoln, NE 68508

Re: Shamrock Addition Final Plat No. 05073
Generally located at Shamrock Road & South 70th

Dear Mr. Krout:

On behalf of the owner, we hereby request waiver of the following requirements of the subdivision ordinance:

1. Dedication of additional right-of-way abutting proposed Lot 1 to extend Shamrock Road to the west boundary of Lot 1, and dedication of additional right-of-way to accommodate a cul-de-sac turnaround on Lot 1.
2. Paving of Shamrock Road abutting the subdivision.
3. Sidewalks along the south side of Shamrock Road.
4. Street lights along the south side of Shamrock Road.
5. Street trees along the south side of Shamrock Road.
6. Any other public or private improvement or facility required by Chapter 26.23 of the land subdivision ordinance which are not currently in place.

We have considered the possibility suggested by the staff of a joint application for a community unit plan consisting of all property owners whose land abuts Shamrock Road, together with a petition to vacate Shamrock Road to create a private roadway. Unfortunately, not all the property owners are able to agree, and we must proceed to clear the title to this property.

As you know, the original condition requiring a final plat to be filed on this property was for the purpose of platting a north-south street connecting Shamrock Road to Park Crest Drive. Inasmuch as that option no longer exists, we think that waiver of these requirements is consistent

Pierson, Fitchett, Hunzeker, Blake & Katt

Marvin S. Krout
January 19, 2006
Page 2

with the previously approved subdivision. Please have this matter scheduled on the Planning Commission agenda as soon as possible. We hope you will recommend approval of these waivers. Thank you very much.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Hunzeker". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Mark A. Hunzeker
For the Firm

cc: Howard Richoux
Bill Austin

MAH:la

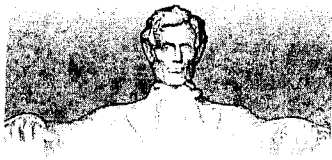
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Memorandum

To: Brian Will, Planning Department
From: Dennis Bartels, Engineering Services
Subject: Shamrock Addition Final Plat Waivers
Date: January 31, 2006
cc: Randy Hoskins
Roger Figard

Engineering Services has reviewed the requested waivers to the subdivision ordinance for Shamrock Addition located on the south side of Shamrock Road west of South 70th and has the following comments:

1. Shamrock Road is a dead-end public street extending to U.S. government property as part of Holmes Lake construction. In my judgement, Shamrock will never be extended and will remain a dead-end roadway. Since it is approximately 1/4 mile from 70th to the west end of the dead-end, a right-of-way for a permanent cul-de-sac bulb should be required and not waived.
2. Shamrock Road is an existing aggregate surface street that does not meet State Board of Classification minimum standards for a street. Trees are too close to the edge of the substandard roadway which now functions as a one lane road due to its narrow width. The City has liability for the substandard street which increases by adding additional lots and traffic potential. Engineering Services recommends that the street be paved per subdivision ordinance and design standard requirements.
3. Engineering Services recommends that ornamental lighting, street trees, and sidewalks be required per City Ordinance requirements.



CITY OF LINCOLN NEBRASKA

MAYOR COLEEN J. SENG

lincoln.ne.gov

Lincoln-Lancaster County
Planning Department
Marvin S. Krout, Director
Mary F. Bills-Strand, Chair
City-County Planning Commission

555 South 10th Street
Suite 213
Lincoln, Nebraska 68508
402-441-7491
fax: 402-441-6377

August 12, 2005

Joe Kerr
540 West Industrial Lake Drive
Lincoln, NE 68528

RE: Shamrock Addition - Final Plat #05073
Generally located at Shamrock Road and South 70th Street

Dear Joe:

The following review of the above noted plat lists the steps necessary for the plat to be approved. It states that any improvements that are not constructed at the time of final platting must be guaranteed by sureties to ensure their installation. However, staff understands that the owners do not want to make the improvements, but instead continue to maintain the area as it exists.

For the final plat to be approved, the improvements either must be installed or guaranteed, or the requirement to install them must be waived by the City. There are two ways to have the requirements waived. The first is to petition the City Council to waive the improvements in conjunction with this final plat. Staff does not support this alternative because the City remains responsible for maintenance of Shamrock Road which is now a public street.

Staff recommends a second alternative which includes all the property owners adjacent to Shamrock Road to join together and apply for a community unit plan (CUP), accompanied by a petition to vacate Shamrock Road. The CUP could propose a lot layout that reflects existing development, and would simultaneously dedicate Shamrock Road as a private roadway. Maintenance of all the improvements and common areas, including the private roadway, become the responsibility of the homeowners and not the City.

The review of the above final plat submitted on July 14, 2005 found the following deficiencies that must be addressed so we can continue the review:

1. Submit a statement from the County Treasurer's office that there are no delinquent taxes against the land within the proposed subdivision and there are no liens for taxes which have been levied but which are not yet delinquent, and a statement that all special assessment installment payments are current as applied to said proposed subdivision.

2. Provide a street tree plan for the review of the Parks and Recreation Department. The landscape plan shall have a note stating a certified landscape contractor as approved by the Parks and Recreation Department shall be used to install street trees.
3. The legal description must also include the vacated portion of South 66th Street that is included in the plat.
4. The dashed line and reference to vacated South 66th Street must be deleted from Lot 1.
5. Additional right-of-way must be dedicated to extend Shamrock Road to the west boundary of Lot 1. The area to be dedicated must be shaded and identified as additional right-of-way to be dedicated. Additional right-of-way must also be dedicated to accommodate a cul-de-sac turn around on Lot 1.
6. The 14th line of the surveyor's certificate must be revised to read "...as shown on this final plat in....."
7. Correct the spelling from cord to chord in the 15th line of the surveyor's certificate.
8. Revise the dedication to include the statement "THE STREETS SHOWN THEREON ARE HEREBY DEDICATED TO THE PUBLIC."
9. Submit the fee to record the plat and subdivision agreement in the Lancaster County Register of Deeds. The fee is \$.50 per existing lot and per new lot plus \$20.00 per plat sheet. The fee for the Subdivision agreement is \$.50 per new lot plus \$5.00 per page. Other documents will add to the fee. If you have questions about the fees please contact the Register of Deeds. The check should be payable to the Lancaster County Register of Deeds.

The Register of Deeds requests a list of all new lots and blocks created by the plat be attached to the subdivision agreement so the agreement can be recorded on each new lot.
10. All affidavits, certificates, acknowledgments, dedication, notary seals, and lien holder consent and subordination shown on the plat shall be signed with **opaque black ink**.
11. Submit the completed Final Plat and 3 prints to the Planning Staff and the Plat is found acceptable.

All information required to be submitted with a final plat is described in Chapter 26.19 of the Land Subdivision Ordinance.

Before this final plat may be approved, the Owner(s) must:

1. Complete the public street paving including a cul-de-sac turn-around or an executive order must be approved guaranteeing the completion of the paving. The paving shall be completed within two (2) years following the approval of this final plat.
2. Complete the sidewalks along the south side of Shamrock Road as shown on the final plat or post a surety in the amount of \$12,500 to guarantee the completion of the sidewalks. The sidewalks shall be completed within four (4) years following the approval of this final plat.
3. Complete the public street lights along the south side of Shamrock Road or an executive order must be approved guaranteeing the completion of the street lights. The street lights shall be completed within two (2) years following the approval of this final plat.
4. Plant the street trees along the south side of Shamrock Road or post a surety in an amount to be determined by the Parks and Recreation Department to guarantee the planting of the trees. The trees shall be planted within four (4) years following the approval of this final plat.
5. Complete any other public or private improvement or facility required by Chapter 26.23 (Development Standards) of the Land Subdivision Ordinance in a timely manner which have not been waived but which inadvertently may have been omitted from the above list of required improvements or post surety in an amount sufficient to guarantee completion of said improvement. The improvement shall be completed within the time limits provided in Section 26.11.040.

The City Attorney will prepare and submit to you the Subdivision Agreement after you have submitted an ownership certificate and copies of a correct final plat to the Planning Department. The owners must sign the Agreements in the presence of a notary and then return the signed agreements to the City Attorney.

The Subdivision Agreement will require the owner(s) at owners own cost and expense:

to complete the street paving of public streets shown on the final plat within two (2) years following the approval of this final plat.

to complete the installation of sidewalks along the south side of Shamrock Road as shown on the final plat within four (4) years following the approval of this final plat.

to complete the installation of public street lights along the south side of Shamrock Road within two (2) years following the approval of this final plat.

to complete the planting of the street trees along the south side of Shamrock Road within four (4) years following the approval of this final plat.

to timely complete any other public or private improvement or facility required by Chapter 26.23 (Development Standards) of the Land Subdivision Ordinance which have not been waived but which inadvertently may have been omitted from the above list of required improvements.

to submit to the Director of Public Works a plan showing proposed measures to control sedimentation and erosion and the proposed method to temporarily stabilize all graded land for approval.

to comply with the provisions of the Land Preparation and Grading requirements of the Land Subdivision Ordinance.

to submit to the lot buyers and builders a copy of the soil analysis.

to pay all design, engineering, labor, material, inspection, and other improvement costs.

Before you begin to grade or disturb any land one acre or greater in area:

The Lower Platte South NRD must approve a drainage and grading plan including stormwater management, erosion, and sediment control. Contact J. B. Dixon at 476-2729 or jbdixon@lpsnrd.org for questions regarding the plans.

Before you begin to install the improvements:

A licensed surveyor or engineer must certify that the grading and sediment and erosion control measures have been completed in conformance with the approved preliminary plat, drainage study, NPDES permit, grading, and final street grades. Address questions to Gary Lacy at 441-4957 or glacy@lincoln.ne.gov.

and

An executive order (E.O.) approved by the Mayor is required before public streets and public ornamental street lighting can be installed or constructed. Contact Charles Baker at 441-7838 or cbaker@lincoln.ne.gov in the Public Works & Utilities Department regarding the E.O. process. A bond, escrow, or other security approved by the City Law Department must be posted to guarantee the completion of the improvements prior to the Mayor approving the E.O. If the other required improvements not requiring an E.O. have not been completed then a bond, escrow, or other security approved by the City Law Department must be posted to guarantee completion of the improvements. The form can be accessed on the Internet at lincoln.ne.gov keyword = *planningform*. Select the link titled "Agreement for Escrow of Security Fund under the section heading "Other".

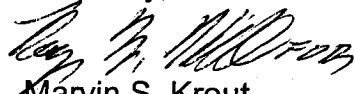
The final plat can be approved as soon as all required information is submitted, instructions completed, and sureties have been approved by the Law Department. There is a 14 day appeal period. Unless the approval is appealed the final plat and the signed subdivision agreement will be recorded in the Register of Deeds following the appeal period provided all other requirements including the proper recording fee have been submitted. Please find attached reports from other departments who reviewed your plans.

We are committed to working with you as we proceed through your development review. Before installing or constructing the improvements or should you have questions on:

public streets and utilities contact Charles Baker at 441-7838 or cbaker@lincoln.ne.gov ,
street lights contact Larry Kathol, L.E.S. at 467-7642 or lkathol@les.com,
sidewalks contact Harry Kroos at 441-8405 or hkroos@lincoln.ne.gov,
street trees contact Steve Nosal or Steve Schwab at 441-7035 or forestry@lincoln.ne.gov ,

If you any questions please do not hesitate to contact Brian Will at 441-6362, or at bwill@lincoln.ne.gov.

Sincerely,


Marvin S. Krout
Director of Planning

Attachments

xc: Howard Richoux, 6701 Shamrock Road, Lincoln, NE 68506
Jon Waterbury, 6633 Shamrock Road, Lincoln, NE 68506
Dennis Bartels, Public Works
Steve Nosal, Parks and Recreation
file

Fee \$... 50.00...

NO. 2405

SE 1/4, SEC. 33 T. 10 N., R. 7

APPLICATION FOR SUBDIVISION PERMIT

TO THE LINCOLN CITY—LANCASTER COUNTY PLANNING DEPARTMENT

The undersigned hereby applies for a permit to subdivide the following described parcel of land:

LEGAL DESCRIPTION OF PROPERTY Part of the North 3/8 of Lot 7, Potter's Subdivision of Irregular Tracts 2 and 51, in the SW 1/4 of Section 33, T10N, R7E of the 6th P.M., Lincoln, Nebraska, were particularly described on attached Exhibit "A" in Lancaster County, Nebraska

DESCRIPTION OF PARCELS CREATED:

DESCRIPTION KEY: Parcel numbers are not to be used for legal descriptions.

PARCEL 1 through 4: See attached Exhibit "B"

PARCEL 2

PARCEL 3

PARCEL 4

- NOTE:** (1) This subdivision permit is issued in accordance with Resolution No. 70031 adopted by City Council on April 15, 1983, attached to and made a part of this subdivision approval as Exhibit "D".
- (2) The approval of this subdivision permit is granted with the conditions of approval as specified in Agreement attached to and made a part of this subdivision approval as Exhibit "E".
- (3) FAILURE TO ACCOMPLISH THE PLATTING OF PROPERTY WITHIN ONE YEAR FROM THE DATE ADMINISTRATIVE APPROVAL IS GRANTED SHALL RENDER THIS SUBDIVISION PERMIT NULL AND VOID. PARCEL NOS. 2 AND 4 ARE NON-BUILDABLE UNTIL PLATTED.

APPROVED THIS 23RD DAY OF April 1984

1. CITY OF LINCOLN, AND ITS CITY COUNCIL

PLANNING DIRECTOR

—OR—

2. LANCASTER COUNTY, AND ITS COUNTY BOARD

CHAIRMAN, COUNTY BOARD

COUNTY SURVEYOR

SKETCH OF SUBDIVISION:

See attached Survey Record as Exhibit "C"

I HEREBY CERTIFY THAT THE ABOVE STATEMENTS ARE CORRECT

Jonathan L. Waterbury

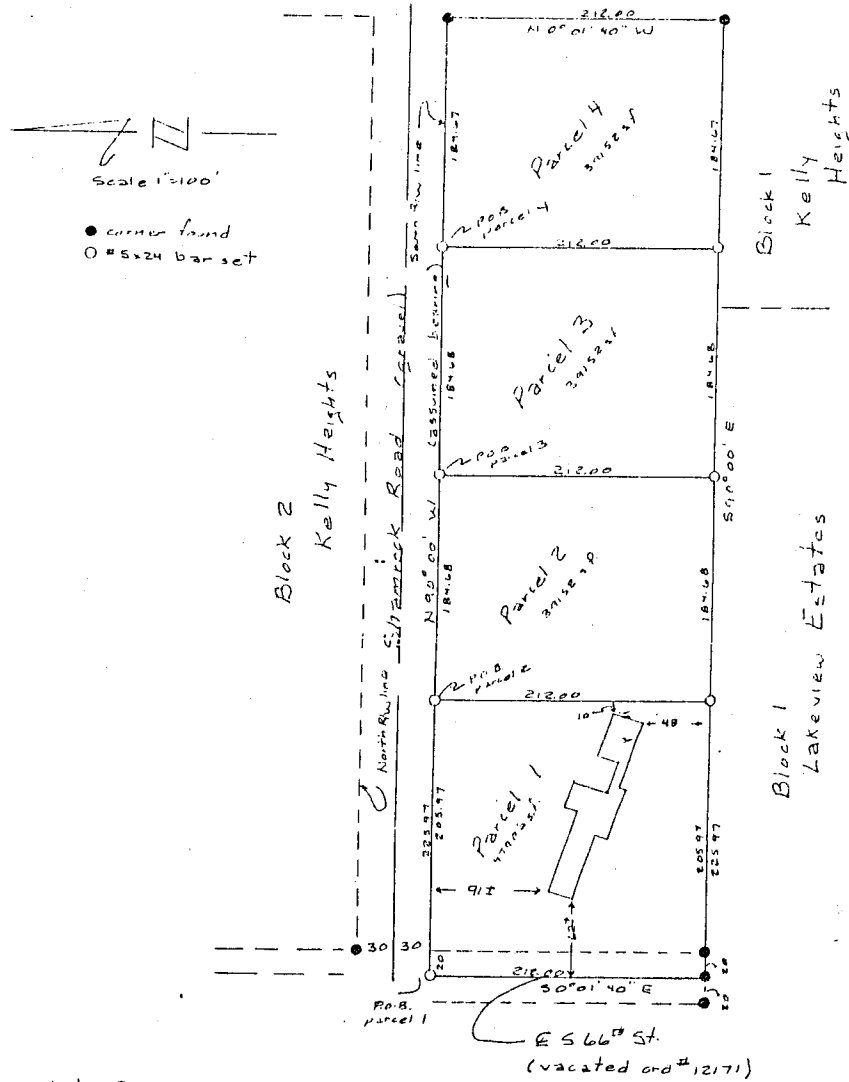
OWNER: Dawn Waterbury

019

ITEM 3

SURVEY RECORD

Attachment to application for administrative subdivision
 Survey of: of part of Lot 3, Township 2N, Range 10E, Section 1, T12N, R10E, S1E
 Containing part of Section 1 of T12N, R10E, S1E
 County, Nebraska
 State of Nebraska



Note: Dwelling on Parcel #1
 is a single family and is
 of frame stone construction.

Jesse M. Wininger, L.S.
 PROFESSIONAL SURVEYOR

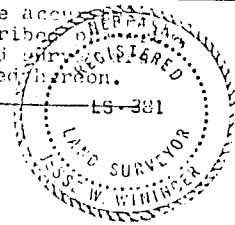
123 SO. 84TH - SUITE B
 LINCOLN, NE 68510
 402/483-5460

NEBRASKA LS 381
 COLORADO LS 10743
 OKLAHOMA LS 1033

I hereby certify that I have accurately
 surveyed the foregoing described property
 and that the results of said survey are
 truly and accurately depicted hereon.

Jesse M. Wininger, L.S. 381

Date: June 11, 1984



Introduce: 3-18-85

RESOLUTION NO. A- 70031

WHEREAS, an application for an administrative subdivision of real property described as:

Part of the North three-eighths of Lot 7, Potter's Subdivision of Irregular Tracts 2 and 51, in the Southeast Quarter of Section 33, Township 10 North, Range 7 East of the Sixth Principal Meridian, Lincoln, Lancaster County, Nebraska, described as follows:

Beginning at the point of intersection of the centerline of vacated 66th Street and the south right-of-way line of Shamrock Road; thence along the said centerline on an assumed bearing of South 0 degrees 01 minute 40 seconds east, 212.00 feet; thence south 90 degrees 00 minutes east, 780.00 feet; thence north 0 degree 01 minute 40 seconds west, 212.00 feet to a point on the south right-of-way line of Shamrock Road; thence along the said right-of-way line north 90 degrees 00 minutes 00 seconds west, 780.00 feet to the point of beginning,

has been made by Jonathan L. and Joann Waterbury; and

WHEREAS, the application for administrative subdivision approval was not approved for nonconformance with the requirement that the subdivision be accomplished by the platting procedures when a street is needed within the area of the proposed lots and the requirement that sidewalks be constructed along the south side of Shamrock Road abutting the proposed subdivision; and

WHEREAS, applicants have requested a modification to waive said requirements pursuant to Section 26.31.010 of the Lincoln Municipal Code; and

WHEREAS, the City Council finds that the strict application of all subdivision requirements would result in actual difficulties or substantial hardship or injustice to the applicants.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That, in accordance with the recommendations of the Planning Commission:

a. The requirement that the subdivision be accomplished by the platting procedures when a street is needed within the area of the proposed lots is hereby waived under the following conditions:

The subdividers, their successors and assigns agree:

1. To submit all required drawings, documents, information, and fees to accomplish the platting of the subject property in accordance with the platting requirements of the City of Lincoln, including the dedication of a street from Shamrock Road to the south limits of the proposed subdivision in the vicinity of proposed Parcel No. 4.

CITY OF LINCOLN
RECEIVED

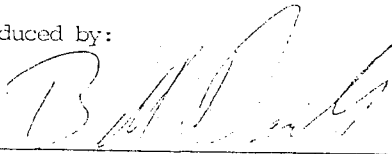
021

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2. That proposed Parcel Nos. 2 and 4 shall be nonbuildable until the final plat of the subject property is approved and accepted by the City of Lincoln.
 3. That failure to accomplish the platting of the subject property within one year from the date administrative subdivision approval is granted shall render the administrative subdivision permit null and void.

08 b. The requirement that sidewalks be constructed along the south side of
09 Shamrock Road abutting the proposed subdivision is hereby waived; provided,
10 however, that the applicants understand and agree that this waiver shall in no
11 way be construed to relieve the applicants or any future owners of any future
12 obligation to construct sidewalks upon proper order of the City.

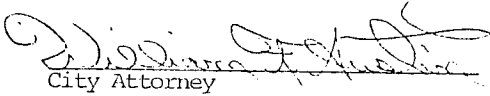
13 All other conditions for approval of this administrative subdivision
14 approval shall be complied with by the applicants.

15 Introduced by:

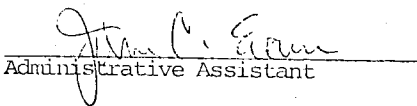


Approved as to Form:

AYES: Ahlschwede, Danley, Gayley,
Hampton, Hoffman, Johnson,
Shackelford;
NAYS: None.


City Attorney

Staff Review Completed:


Administrative Assistant

ADOPTED

APR 15 1985

By City Council

AGREEMENT

IN CONSIDERATION of the City of Lincoln, Nebraska, a municipal corporation, granting administrative subdivision approval as specified on the attached subdivision permit, it is agreed by and between the subdivider and the City as follows:

1. The subdivider will submit all required drawings, documents, information, and fees to accomplish the platting of the subject property in accordance with the platting requirements of the City of Lincoln, including the dedication of a street from Shamrock Road to the south limits of the proposed subdivision in the vicinity of Parcel No. 4 as described on attached Exhibit 'B'.
2. That proposed Parcel Nos. 2 and 4, as described on attached Exhibit 'B', shall be nonbuildable until the final plat of the subject property is approved and accepted by the City of Lincoln.
3. That failure to accomplish the platting of the subject property within one year from the date administrative subdivision approval is granted shall render the administrative subdivision permit null and void.

The agreements contained herein shall run with the land described above and shall be binding and obligatory upon the heirs, successors and assigns of the subdivider to all or any part of the real estate as described above.

DATED this 23rd day of April, 1985.

Jonathan L. Waterbury
Jonathan L. Waterbury

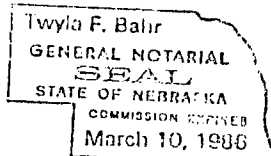
Joann Waterbury
Joann Waterbury

STATE OF NEBRASKA)
) ss:
COUNTY OF LANCASTER)

Before me, a Notary Public qualified for said county, personally came Jonathan L. Waterbury and Joann Waterbury, husband and wife, to me known to be the identical person or persons who signed the foregoing instruments, and acknowledged the execution thereof to be thier voluntary act and deed.

WITNESS my hand and notarial seal on

this 23rd day of April, 1985.



Twyla F. Bahr
Notary Public

My commission expires: March 10, 1986

UTILITY EASEMENT

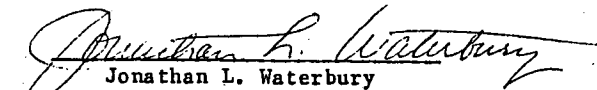
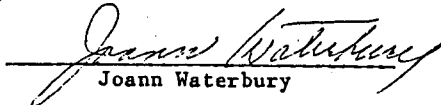
KNOW ALL MEN BY THESE PRESENTS:

For and in consideration of the mutual benefits and to be driven by the parties hereto from the facilities proposed hereinafter, the undersigned, does hereby grant, in perpetuity to the CITY OF LINCOLN, NEBRASKA; the LINCOLN TELEPHONE AND TELEGRAPH COMPANY; TV TRANSMISSION, INC.; and MINNEGASCO; thier successors and assigns, herein called the grantee, an easement to allow entry for the purpose of construction, reconstruction, replacement, repair, operation and maintenance of wires, cables, conduits, fixtures, poles, towers, pipes and equipment for the distribution and supply of electricity, gas, telephone service and all appurtenance thereto, over, under, and above the following described real property in Lancaster County, Nebraska:

The south 5 feet of Parcels 1, 2, 3, & 4, the west 5 feet of Parcels 1 and 3 and the east 5 feet of Parcels 2 and 4. See attached Exhibit "A" for descriptions of Parcels 1, 2, 3 and 4.

To have and to hold the easement and rights herein granted unto the grantee and to the grantee's successors and assigns forever.

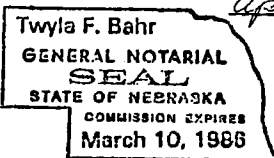
Dated this 23rd day of April, 1985.

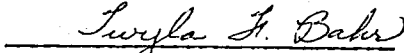

Jonathan L. Waterbury

Joann Waterbury

STATE OF NEBRASKA)
) ss:
COUNTY OF LANCASTER)

Before me, a Notary Public qualified for said county, personally came Jonathan L. Waterbury and Joann Waterbury, husband and wife to me known to be the identical person or persons who signed the foregoing instruments, and acknowledged the execution thereof to be their voluntary act and deed.

WITNESS my hand and notarial seal on this 23rd day of April, 1985.




Notary Public

My commission expires: March 10, 1986

CHARLES THONE
DONALD H. ERICKSON
WM. E. MORROW, JR.
DANIEL B. KINNAMON
THOMAS J. GUILFOYLE
VIRGIL K. JOHNSON
CHARLES V. SEDERSTROM
CHARLES D. HUMBLE
ALAN M. WOOD
WILLIAM F. AUSTIN
JOHN C. BROWNRIGG
THOMAS J. CULHANE
RICHARD J. GILLOON
SAMUEL E. CLARK
GARY L. HOFFMAN
MARK M. SCHORR
JERALD L. RAUTERKUS
WILLIAM T. FOLEY
PATRICK R. GUINAN

ITEM NO. 3.5: WAIVER NO. 06001
LAW OFFICES (p.107 - Public Hearing - 2/15/06)
ERICKSON & SEDERSTROM, P.C.
A LIMITED LIABILITY ORGANIZATION

SUITE 400
301 SOUTH 13TH STREET
LINCOLN, NEBRASKA 68508-2571
TELEPHONE (402) 476-1000
FACSIMILE (402) 476-6167

WRITER'S INTERNET ADDRESS
waustin@eslaw.com

JOHN B. MORROW
MICHELLE B. MILLER
TIERNAN T. SIEMS
JASON R. YUNGUM
PAUL D. HEIMANN
MATTHEW V. RUSCH
KRISTINE J. GATES
ANGELA PROBASCO
TRENT J. MARTINET
NICOLE M. LUCIUS
JOVAN W. LAUSTERER
BRADLEY B. MALLBERG

OF COUNSEL

DAVID J. NIELSEN
DONALD B. STENBERG

OMAHA OFFICE
10330 REGENCY PARKWAY
DRIVE, SUITE 100
OMAHA, NEBRASKA 68114
(402) 397-2200

February 7, 2006

Mr. Brian Will
Lincoln Lancaster County Planning Department
County-City Building, Mailroom Box 16
555 South 10th Street, Suite 213
Lincoln, NE 68508

FEB - 8 2006

Re: Shamrock Addition-Waiver of Subdivision Requirements
Waiver No. 06001
Our File No.: 24816.49653

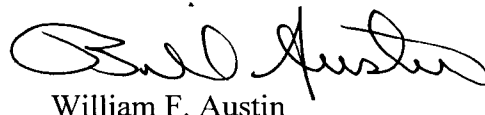
Dear Brian:

I am transmitting herewith a copy of a Petition signed by all of the property owners abutting Shamrock Road from the East line extended of Lot 1, Kelly Heights, 1st Addition to the Western terminus of Shamrock Road, except the applicant for the waivers, Howard Richoux/James Moon. All of these property owners are agreeable to the development of a community unit plan for the area, which would exclude those properties to the East and abutting on 70th Street, but which would be sufficient for the smaller community unit plan that has been previously discussed.

I also point out that one of the signers of the Petition is Mr. Jon Waterbury, who is one of the owners of the properties within the proposed Shamrock Addition.

If possible, could you include the Petition in the materials forwarded to the Planning Commission in anticipation of the public hearing? Thank you for your assistance.

Sincerely,


William F. Austin

WFA:rln
Enclosure
c: Mark Hunzeker

025

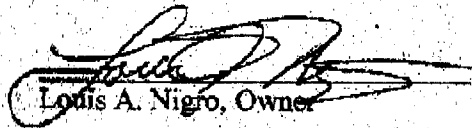
PETITION

The undersigned owners of properties abutting upon Shamrock Road from the East line extended of Lot 1, Kelly Heights, 1st Addition to the Western terminus of Shamrock Road, (excluding the applicant for waivers of the requirement for installation of various subdivision improvements in conjunction with Shamrock Addition Final Plat No. 05073), do hereby endorse the recommendation set forth in the Planning Staff Report dated August 12, 2005, relating to said Final Plat regarding the creation of a Community Unit Plan and state that all of the undersigned are agreeable (a) to the creation of a Community Unit Plan, that would include their properties and the properties in the proposed Shamrock Addition, (b) to the vacation of Shamrock Road as it abuts their properties or to the West line of South 70th Street if possible, and (c) to the subsequent conversion of vacated Shamrock Road to a privately owned and maintained street.

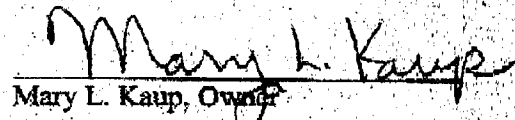
Signed by the following representing the stated ownership:

Lot 2, Block 2, Kelly Heights, and Lot 2, Kelly Heights 1st Addition, City of Lincoln, Lancaster County, Nebraska.

By:


Louis A. Nigro, Owner

By:


Mary L. Kaup, Owner

Dated:

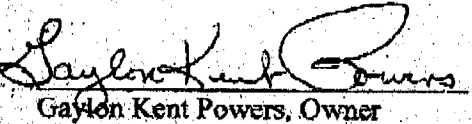
2-1-06

Dated:

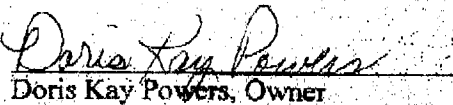
2-1-06

Lot 3, Block 2, Kelly Heights, and the East half of vacated South 66th Street adjacent thereto, in the City of Lincoln, Lancaster County, Nebraska.

By:


Gaylon Kent Powers, Owner

By:


Doris Kay Powers, Owner

Dated:

Feb 6, 2006

Dated:

2-6-2006

026

Part of the North 3/8 of Lot 7, Potter's Subdivision of Irregular Tracts 2, and 51, in the Southeast Quarter of Section 33, Township 10 North, Range 7 East of the 6th P.M., Lincoln, Lancaster County, Nebraska described as follows, to wit:

Beginning at the intersection of the centerline of vacated 66th Street and the South right of way line of Shamrock Road; Thence along the said centerline on an assumed bearing of S 0° 01' 40" E 212.00'; Thence S 90° 00' E 225.97'; Thence N 0° 01' 40" W 212.00' to a point on the South right-of way line of Shamrock Road; Thence along the said right of way line N 90° 00' W 225.97' to the Point of Beginning, said tract containing an area of 47905 Square feet.

By: *Jonathan L. Waterbury* By: *Joan Shaw Waterbury*
Jonathan L. Waterbury, Owner Joan Shaw Waterbury, Owner

Dated: 2-3-2006 Dated: 2-3-2006

Lot 1, Kelly Heights 1st Addition, Lincoln, Lancaster County, Nebraska.

By: *L. Lynn Rex*
L. Lynn Rex, Owner

Dated: 2-4-06